

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION

15

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW ALLISON,

Defendant.

Criminal Case No. (0645)2:17-CR-20024(6)

F I L E D
SEP 26 2018
CLERK'S OFFICE
DETROIT

PRO SE MOTION PURSUANT TO 28 U.S.C. § 2255 TO
VACATE, SET ASIDE, OR CORRECT SENTENCE

NOW COMES Defendant Andrew Allison, pro se, and respectfully moves this Honorable Court pursuant to Title 28, United States Code, Section 2255, to vacate, set aside, or correct his sentence. In support of his motion, Defendant avers the following.

Procedural History

On April 11, 2018, Defendant pleaded guilty to possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(A)(1). Defendant was subsequently sentenced to a term of imprisonment of 36 months and a term of supervised release of four (4) years. Defendant Allison fully cooperated with the government; he was awarded a § 5K1.1 downward departure from the five-year mandatory minimum as a result of assisting the government in the prosecution of others.

Discussion on Ineffective Assistance of Counsel

At sentencing, and prior to sentencing, Defendant Allison had requested his counsel, Attorney Scharg, to present to this Honorable Court his mother's medical records/documents written by Defendant's mother's doctor in order to show the Court that Defendant's mother has serious life-threatening issues. Furthermore, Defendant also stated to Attorney Scharg that he wanted his mother to testify at sentencing concerning in detail the status of her health. Therefore,

Defendant's mother could have stated to this Court that Defendant is an irreplaceable caretaker. Attorney Scharg kept silent and failed to present these issues to the Court. Attorney Scharg "failed to provide a meaningful adversarial testing of these matters." Attorney Scharg abandoned Defendant Allison on these matters. The performance of Attorney Scharg fell below an objective standard. Thus, for this reason Defendant is submitting this motion in order to be heard by this Honorable Court on these serious issues raised herein.

Governing Legal Standards Addressing § 2255 Habeas Petitions

1. In order to make a "substantial showing" of the denial of a constitutional right as required under 28 U.S.C. § 2255(C)(2), a Habeas petitioner must demonstrate "that reasonable jurists could debate whether ... the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d (2000)(quoting Barefoot v. Estelle, 463 U.S. 880, 893 n. 4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983)).
2. The United States Supreme Court set forth the legal principles governing claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Strickland requires a petitioner claiming ineffective assistance of counsel to demonstrate that his counsel's performance was deficient and that he suffered prejudice as a result. 466 U.S. at 687. Hale v. Davis, 512 F. App'x 516, 520 (6th Cir. 2013).

Governing Legal Standards Addressing
Family Responsibilities Pursuant to U.S.S.G. § 5H1.6

1. See, United States v. Leon, 341 F. 3d 928, 933 (9th Cir. 2003). In this instant case stated in partial context: "granting a departure where the defendant's wife suffered from kidney cancer[,]" and longstanding depression, and the defendant was found to be "an irreplaceable caretaker." Furthermore, it states under U.S.S.G. § 5H1.6, based on family circumstances, "generally

involve[s] situations where the defendant is an irreplaceable caretaker of children, elderly, and/or seriously ill family members. Ultimately, the district court departed downward six levels based on defendant's family ties and responsibilities.

2. See, United States v. Jeffrey P. Schroeder, 536 F. 3d 746, 2008 U.S. App. LEXIS 16548 (7th Cir. 2008). In this case, the court states that "a defendant's extraordinary family circumstances can constitute a legitimate basis for imposing a below-guidelines sentence." United States Sentencing Guidelines § 5H1.6 provides that "family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted[,]" but a district court may impose a below-guidelines sentence "once it finds that a defendant's family ties and responsibilities [] are so unusual that they may be characterized as extraordinary." [536 F. 3d 756] United States v. Canoy, 38 F. 3d 893, 906 (7th Cir. 1994). See also, United States v. Jaderany, 221 F. 3d 989, 996 (7th Cir. 2000). The district court may apply those departures by way of analogy in analyzing § 3553(a) factors. Miranda, 505 F. 3d at 792. Schroeder testified that his daughter has a compromised immune system and that she is particularly vulnerable to illness, making daycare an implausible childcare option. This case was vacated and remanded for resentencing.

3. See, Deborah Charles v. United States, 2003 U.S. Dist. LEXIS 8434 (1st Cir. decided May 20, 2003). In this case, the Court states in partial context that "family circumstances are another ground for departure and are to be taken into account only where the facts are extraordinary or where a defendant is truly irreplaceable as a caretaker." United States v. Pereira, 272 F. 3d 76, 82, 83 (1st Cir. 2001). See also, United States v. Bogdan, 284 F. 3d 324 (1st Cir. 2002).

4. Defendant Allison's case is similar to all these cases due to his mother's serious life-threatening health issues.

Title 28 United States Code § 3553(a) Factors

Defendant Allison's attorney failed to raise claims concerning Defendant's mother's health under United States Sentencing Guidelines § 5H1.6. Nevertheless, as a result of this failure, the Court could not address Defendant's claims. Furthermore, Defendant firmly believes that in light of his claims concerning his mother that he would be a candidate to be entitled to the relief requested under 18 U.S.C. § 3553(a) and U.S.S.G. § 5H1.6.

Governing Legal Standards Concerning Pro Se Litigants

1. See, Albra v. Advan, Inc., 490 F. 3d 826, 829 (11th Cir. 2007), which states that "pro se litigants filing are to be construed liberally."
2. See, Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1992), which states in this United States Supreme Court doctrine that "pro se litigants' pleadings are held to 'less stringent standards.'"
3. Defendant Allison is citing the aforementioned cases because he is a layman in the law.

Furthermore, as a result of being a layman, Defendant Allison hopes that this Honorable Court will look at his petition liberally and not stringently as Defendant lacks the complete legal education of a licensed attorney.

Conclusion

Defendant avers that throughout all legal proceedings he has always been committed to being truthful to the best of his knowledge with the government and with this Honorable Court. Defendant has assisted the government in the prosecution of others. Furthermore, Defendant will continue to assist the government if he is requested to do so. However, Defendant's mother's serious health issues have compelled him to address Attorney Scharg's failure and silence concerning Defendant's responsibilities as caretaker for his ill mother.

Relief Requested

Defendant hopes and prays that this Honorable Court will grant this Motion to Vacate, Set Aside, or Correct Sentence, and his request to be heard on the issues raised herein.

Respectfully submitted,

Date: 9/24/18

Andrew Allison

Andrew Allison
Reg. No.
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44432

MEMORANDUM OF LAW

1. Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d (2000)
2. Barefoot v. Estelle, 463 U.S. 880, 893 n. 4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983)
3. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
4. Hale v. Davis, 512 F. App'x 516, 520 (6th Cir. 2013)
5. United States v. Leon, 341 F. 3d 928, 933 (9th Cir. 2003)
6. United States v. Schroeder, 536 F. 3d 746, U.S. App. LEXIS 16548 (7th Cir. 2008)
7. United States v. Canoy, 38 F. 3d 893, 906 (7th Cir. 1994)
8. United States v. Jaderany, 221 F. 3d 989, 996 (7th Cir. 2000)
9. Charles v. United States, U.S. Dist. LEXIS 8434 (1st Dist. 2003)
10. United States v. Pereira, 272 F. 3d 76, 82, 83 (1st Cir. 2001)
11. United States v. Bogdan, 284 F. 3d 324 (1st Cir. 2002)
12. Albra v. Adan, Inc., 490 F. 3d 826, 829 (11th Cir. 2007)
13. Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)

EXHIBITS FOR THE COURT'S REVIEW

1. **Exhibit A** - Notarized affidavit of Elaine M. Allison, the mother of the defendant.
2. **Exhibit B** - Letters/Documents from Henry Ford Health System. The letter is prepared by Randy Bell, M.D. In Doctor Bell's letter, he states that Elaine Allison has numerous serious health care issues. Furthermore, the Court will notice in the documents prepared by Henry Ford Health System a problem list of all the medical conditions Elaine Allison has acquired.
3. **Exhibit C** - Notarized affidavit from Elaine Allison's neighbor, Clara B. Barnes Kopczak.
4. **Exhibit D** - Notarized affidavit of Rex Snider.

To Whom It May Concern

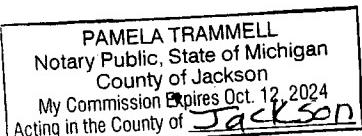
My NAME IS ELAINE M.
ALLISON. I AM THE MOTHER
OF ANDREW T. ALLISON (BD-07/09/70)
AT FCI ELKTON. HE HAS GONE
FROM MY HOUSE since 06/19/18,
AND IT HAS BEEN VERY HARD
ON ME.

I HAVE SO MANY HEALTH ISSUES
THAT I NEED HELP WITH AND
SINCE ANDY LEFT I ONLY HAD
MY NEIGHBOR CLARA BARNES TO
HELP ME BUT SHE IS LIMITED
TO WHAT SHE CAN DO FOR ME.
I SUFFER FROM RA, IT HAS GOTTEN
SO I CAN'T USE MY LEFT HAND
AND I AM HAVING 3 MORE SURGERY
IN 2 mos, next is my L kidney
has cancer THAT IS 08/02/18

Clara is limited to what she can do and is having back surgery 09/14/18. And this is where her help STOPS. I need Andy as my care giver as he was before he went to prison. Doing the ~~household~~ ^{monday} cooking, cleaning, and fixing things taking me to Doc Opt. Please send him home to help his mom I am lost without him.

~~Elaine M. Allison~~
Sincerely,
Elaine M. Allison

ELAINE M. ALLISON
190 W. ALBORVIEW DR
SPRING ARBOR MI 49283





HENRY FORD HEALTH SYSTEM

July 31, 2018

Elaine Mae Allison
190 W Arbor View Dr
Apt A3
Spring Arbor MI 49283

MRN: 62971654

To Whom it May Concern,

Elaine Allison has numerous chronic health care issues and requires assistance with ADLs. Her son had been helping her with these prior to being incarcerated. He has been very helpful to her in the past and she is struggling without his assistance. Please consider this in his case for potential early release so he can help her with her ADLs and medical needs.

If you have any questions or concerns, please don't hesitate to call.

Sincerely,

A handwritten signature in black ink that appears to read "Randy Bell".

RANDY BELL, MD

HENRY FORD ALLEGIANCE FAMILY MEDICINE - NORTH STREET
1401 W North Street
Jackson MI 49202-3135
Dept: 517-205-2555
Dept Fax: 517-205-0117

SEP 13 2018	Follow Up with BISCHAN HASSUNIZADEH, MD Thursday September 13 1:00 PM Jackson Cardiology Associates is located at 205 Page Ave in Jackson, MI 49201. We are across Michigan Ave from Henry Ford Allegiance Hospital. You can park in our parking lot and enter either door to access the waiting room.	Jackson Cardiology Associates 205 PAGE AVE, SUITE B JACKSON MI 49201-2462 517-787-3577
SEP 21 2018	Follow-Up Visit with MICHELLE AUBIN, MD Friday September 21 11:00 AM Please arrive 10 minutes prior to your scheduled time.	Henry Ford Allegiance Orthopedics 1201 E MICHIGAN AVE JACKSON MI 49201-1853 517-205-1431
SEP 26 2018	Office Visit with RANDY BELL, MD Wednesday September 26 11:15 AM Please arrive 10 minutes prior to your scheduled time.	Henry Ford Allegiance Family Medicine - North Street 1401 W North Street Jackson MI 49202-3135 517-205-2555
OCT 24 2018	Office Visit with RANDY BELL, MD Wednesday October 24 12:15 PM Please arrive 10 minutes prior to your scheduled time.	Henry Ford Allegiance Family Medicine - North Street 1401 W North Street Jackson MI 49202-3135 517-205-2555

Showing your appointments through October 24, 2018. You have more appointments scheduled after these.

If you need to change or cancel any appointment, call the department number listed for your upcoming appointment(s).

Problem List as of 7/25/2018

Anemia

Hardening of the arteries of the brain

Osteoarthritis (arthritis due to wear and tear of joints)

Low back pain

Primary cancer of ureteric orifice of urinary bladder

Narrowing of spinal canal

Depression, major, recurrent

Loss of bladder control

Chronic pain

Postherpetic neuralgia

Tobacco abuse

History of blood clot to lungs

Fibromyalgia

Cancer of bladder

Cancer

RHEUMATOID ARTHRITIS

Allergies as of 7/25/2018

Chantix [varenicline]

Ciprofloxacin

Clindamycin

En brel [etanercept]

Escitalopram

Hydroxychloroquine

Levofloxacin

Nitrofurantoin

Ormeprazole

Prochlorperazine

Patient



Elaine Mae

Allison

70 year old

female

9/3/1947

Recent Visits
with You
More...

190 W ARBOR
VIEW DR
APT A3
SPRING ARBOR
MI 49283
517-990-5354 (M)
517-990-5354 (H)
Comm Pref:



Preferred Pharmacies

WEATHERWAX SAVMOR PHARM #4 517-750-2550 (Phone)
- SPRING ARBOR, MI - 8012 SPRING 517-750-4095 (Fax)
ARBOR ROAD

Henry Ford Allegiance LTC 517-205-7486 (Phone)
Pharmacy - JACKSON, MI - 2200 517-205-1689 (Fax)
SPRINGPORT ROAD

Medications

albuterol (PROAIR HFA) 90 mcg/actuation inhaler
apixaban (ELIQUIS) 5 mg Tab tablet
aspirin (ASPIR-81) 81 MG EC tablet
atorvaSTATin (LIPITOR) 80 MG tablet
baclofen (Lioresal) 10 MG tablet
calcium carbonate (CALCIUM 600) 600 mg calcium (1,500 mg) Tab
cycloSPORINE (RESTASIS) 0.05 % ophthalmic emulsion
fluconazole (DIFLUCAN) 100 MG tablet
fluticasone (FLONASE) 50 mcg/actuation nasal spray
fluticasone-salmeterol (ADVAIR DISKUS) 250-50 mcg/dose diskus inhaler
furosemide (LASIX) 20 MG tablet
 gabapentin (NEURONTIN) 800 MG tablet
ibuprofen (ADVIL, MOTRIN) 800 MG tablet
isosorbide mononitrate (IMDUR) 60 MG 24 hr tablet
leflunomide (ARAVA) 20 MG tablet
metoprolol tartrate (LOPRESSOR) 25 MG tablet

Problem List

New problems from outside sources are available for reconciliation

Cardiovascular and Mediastinum

Atherosclerotic cerebrovascular disease

Nervous and Auditory

Post herpetic neuralgia

Musculoskeletal and Integument

Arthritis, degenerative

Genitourinary

Primary cancer of ureteric orifice of urinary bladder (CMS-hcc)

Malignant neoplasm of urinary bladder (CMS-hcc)

Other

Anemia

History of pulmonary embolism

Low back pain

Spinal stenosis

Depression, major, recurrent (CMS-hcc)

Mixed incontinence

Chronic pain

Tobacco abuse

Fibromyalgia

Urothelial carcinoma (CMS-hcc)

Reviewed by MD on 6/27/2018

Registries

Show Detail

Chronic Disease	Added
COPD Registry	9/4/2017
Congestive Heart Failure Registry	8/1/2017
Coronary Artery Disease Registry	8/1/2017
Depression Registry	5/11/2017
Obesity Registry	5/20/2017
Problem	Added
Cancer Population Registry	5/10/2017
Wellness	Added
HFHS Wellness Registry-All	5/9/2017
Wellness Registry: Female 70+	9/3/2017
Others	Added

Q-1-18

To Whom It May Concern,

My name is Clara B. Barnes-Kopczak and I live across the hall from Elaine Allison.

I have been helping Elaine as much as I can in Andrew's absence, which is not as much as I would like to as I have a bad back.

I will be having surgery on my back on Sept. 14, 2018 and will be laid up for anywhere from 3 to 6 months.

Elaine is going to be having surgery on her left wrist and will need help while she is healing and I won't be able to help her.

Elaine will desperately need the assistance of Andrew to be her care giver.

Thank You,

Clara B. Barnes-Kopczak

PAMELA TRAMMELL
Notary Public, State of Michigan
County of Jackson
My Commission Expires Oct. 12, 2024
Acting in the County of Jackson

EXHIBIT-D

September 6, 2018

To Whom It May Concern:

I am writing concerning inmate 55318-039, Andrew Thomas Allison. My relationship with Andrew is that of a long time friend of both he and his mom (Elaine Allison). I am retired and living in the very small community of Corfu, NY caring for my ailing sister.

I am fully aware of Andrew's circumstances and why he is there. I provide support as I am able in a number of ways. One such level of support is to monitor Elaine's state of health, state of mind and needs. Another method is providing Andrew with funds to be able to communicate with his mother and myself. What concerns me now is Elaine's fast declining health and state of mind. She is on a number of meds and has had a couple surgeries. While Andrew was caring for her he controlled how she was taking her meds and helped her through daily needs. There is no one near her daily who can do this now. I cannot be there often enough to help. I am concerned that her current condition is directly related to the lack of care she is receiving. When I talk with her, conversation is confused. I have seen this in her in the past. Andrew monitored her medications and discovered that the pain meds combined with her other meds were the cause of her rapid decline. I see this the same issue now. Andrew was her caregiver and was able to take her for her appointments to doctors and other support.

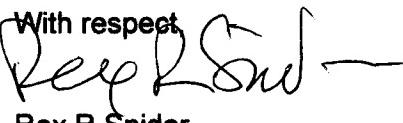
I am not able to provide all the support that is needed to care for Elaine at this point. She did well when in Andrew's care. I fear her condition will continue to worsen.

Andrew has always been Elaine's biggest supporter and source of aid. He provided her with personal care for her health and financing. He made sure every holiday was made to be her best enjoyment. He gave of himself where no other family member would nor does.

Finally, I have had many conversations with Andrew since his time began there. He expresses to me constantly that he wants and needs help to recover from his addiction. He has also asked me to research organizations other than that provided by the Salvation Army, to enable him to carry on with support to a clean continued recovery. The Salvation Army was not and is not the proper support organization for that effort.

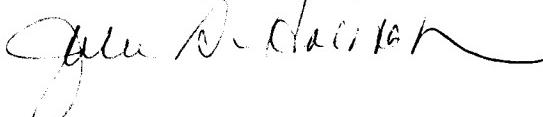
If there is a way for Andrew to fulfill his responsibility to the courts and be with his mother as her caregiver, it is my hope that you would consider that.

With respect,

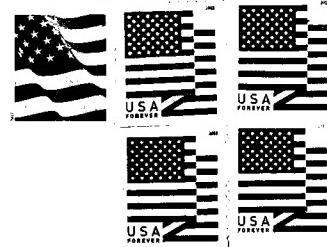


Rex R Snider

JULIE S HOLMAN
Notary Public, State of New York
Qualified in Genesee County
Reg. No. 01H04887553
My Commission Expires March 16, 2019



NAME: Andrew Action
REG.# 55318-039
Federal Correctional Institution Elkton
P. O. Box 10
Lisbon, Ohio 44432



NO Attachment
DP 9/26/18

R E C E I V E D
SEP 26 2018
CLERK'S OFFICE
U.S. DISTRICT COURT

ATTN: CLERK OF COURTS

⇒55318-039⇒
Us District Court 47th Street Courts
231 W Lafayette BLVD
Detroit, MI 48226
United States

RECEIVED
SEP 26 2018
CLERK'S OFFICE
U.S. DISTRICT COURT